

# Congressional Disapproval Actions

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## Research References

U.S. Const. art. I § 7  
Manual §§ 1013–1013(26)

## § 1. In General

Congress has enacted numerous laws reserving to itself a right of review by approval or disapproval of certain actions of the executive branch or of independent agencies. These laws, known as “Congressional disapproval” statutes, take various forms. For example, the Alaska Natural Gas Transportation Act permits the privileged consideration of joint resolutions approving Presidential decisions on the Alaska natural gas transportation system, when those resolutions are reported from committee or are discharged after 30 days. 15 USC §§ 719(f), 719(g). *Manual* § 1013(20). See 95–1, Nov. 1, 1977, p 36347. Another statute sets forth a similar procedure for congressional approval or disapproval of certain actions by the District of Columbia Council. District of Columbia Home Rule Act, §§ 602(c), 604. *Manual* § 1013(5).

## § 2. Constitutionality

Recent Federal court decisions indicate that congressional action to approve or disapprove an executive branch determination should be undertaken by way of a bill or joint resolution and not by way of a simple or concurrent resolution or through committee action. In 1983, the U.S. Supreme Court declared in *Immigration and Naturalization Service v Chadha* that a statute permitting the disapproval of a decision of the attorney general by simple resolution of one House only was unconstitutional. The Court said the device violated the doctrine of separation of powers, the principle of bicameralism, and the clause of the Constitution requiring that legislation passed by both Chambers must be presented to the President for his signature or veto. See 462 US 919. In an earlier decision, the U.S. Court of Appeals had specifically held a one-house legislative veto provision in the Natural Gas Policy Act of 1978 (15 USC § 3341(b)) to be unconstitutional. In its decision the circuit court (for the District of Columbia) said that the pri-

mary basis for its holding was that the one-house veto violates constitutional Article I section 7, both by preventing the President from exercising his veto power and by permitting legislative action by only one House of Congress. The circuit court also found the one-house veto to contravene the separation of powers principle implicit in Articles I, II, and III because it authorizes the legislature to share powers properly exercised by the other two branches of government. The court declared that Article I section 7 sets forth the fundamental prerequisites to the enactment of federal laws—bicameral passage of legislation and presentation for approval or disapproval by the President, and held that congressional disapproval of final agency rules must comply with these requirements. The court added that Congress may choose to use a resolution of disapproval as a means of expediting action, but only if it acts by both Houses and presents the resolution to the President. *Consumer Energy Council of America, et al. v FERC*, 673 F2d 425 (D.C. Cir. 1982), Affd, 103 S. Ct. 3556.

In the light of these decisions, Congress has amended several statutes to convert procedures involving simple or concurrent resolutions of approval or disapproval to procedures requiring joint resolutions to be presented to the President for his signature or returned for a possible veto override, consistent with the “presentment” clause of Article I section 7. *Manual* § 1013.

### § 3. Consideration in the House

Many “Congressional disapproval” statutes prescribe special procedures for the House to follow when reviewing executive branch actions. *Manual* §§ 1013(1)–1013(32). For a list of statutes having such procedures, see *Manual* § 1013. These procedures technically are rules of the House, enacted expressly or impliedly as an exercise of the House’s rule-making authority. At the beginning of each Congress, it is customary for the House to reincorporate by reference in the resolution adopting its rules such “Congressional disapproval” procedures as may exist in current law. Nevertheless, because the House retains the constitutional right to change its rules at any time, the Committee on Rules may report a resolution varying such procedures. *Manual* § 1013.

Where a law enacted as a rule of both Houses provides special procedures during consideration of a joint resolution approving a Presidential determination, and the House then adopts a special order providing for consideration of such a joint resolution in the House, the Speaker will nevertheless interpret the special statutory provisions to apply if consistent with the special order. 97–1, Dec. 10, 1981, p 30486.